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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	Case No. 1:07-cr-00007-1
Plaintiff,	Chicago, Illinois
v.	November 16, 2009
	Sentencing
SCOTT LEWIS,	
Defendant.	

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TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	Office of the U.S. Attorney
	By: Stephen A. Kubiowski
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I N D E X

DESCRIPTION

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01:34:40 1 (Commenced at 1:34 p.m.)

01:34:40 2 THE CLERK: 07CR7, defendant number 1, USA versus

01:34:45 3 Scott Lewis.

01:35:11 4 MR. KUBIATOWSKI: Good afternoon, your Honor. Steve

01:35:13 5 Kubiowski, representing the United States.

01:35:14 6 THE COURT: Good afternoon, Mr. Kubiowski.

01:35:15 7 MR. CHERONIS: Good afternoon, your Honor. Damon

01:35:17 8 Cheronis with Tim Fiscella representing Scott Lewis.

01:35:19 9 THE COURT: Okay. Good afternoon, Mr. Cheronis. And

01:35:22 10 can you spell your last name, sir?

01:35:23 11 MR. FISCELLA: Yes, your Honor. It's

01:35:26 12 F-i-s-c-e-l-l-a.

01:35:26 13 THE COURT: Okay. Thank you. Good afternoon.

01:35:27 14 Good afternoon, Mr. Lewis.

01:35:29 15 THE DEFENDANT: Good afternoon.

01:35:30 16 THE COURT: Okay. Are we all ready to proceed to

01:35:33 17 sentencing today?

01:35:34 18 MR. CHERONIS: Yes, your Honor. And I apologize

01:35:34 19 about the late nature of the letters, but you did receive

01:35:37 20 those today?

01:35:37 21 THE COURT: I did. I received the letters this

01:35:39 22 morning --

01:35:39 23 MR. CHERONIS: Okay.

01:35:40 24 THE COURT: -- and that's not a problem.

01:35:41 25 MR. CHERONIS: Thank you.

01:35:42 1 THE COURT: I'll go through what I have on the record  
01:35:44 2 in just a moment.

01:35:44 3 But, first of all, let's turn to the Presentence  
01:35:47 4 Investigation Report. Do we have a probation officer?  
01:35:50 5 (Cellphone interruption.)

01:35:50 6 MS. GROTH: Good afternoon, your Honor. Malissa  
01:35:52 7 Groth.

01:35:52 8 THE COURT: All right. Who's got the cellphone,  
01:35:54 9 pager, whatever it is. Who's got it? All right. Step  
01:35:58 10 outside and turn it off, please.

01:36:02 11 All right. Please, did you mention your name for the  
01:36:04 12 record?

01:36:04 13 MS. GROTH: Malissa Groth, your Honor, for the  
01:36:07 14 record.

01:36:07 15 THE COURT: All right. Thank you, Ms. Groth, and  
01:36:09 16 thank you for your very thorough report. The Court  
01:36:10 17 appreciates your hard work.

01:36:11 18 MS. GROTH: Thank you.

01:36:12 19 THE COURT: All right. Did everyone receive a copy  
01:36:13 20 of the report?

01:36:13 21 MR. KUBIATOWSKI: Yes, your Honor.

01:36:14 22 MR. CHERONIS: Yes, we did.

01:36:15 23 THE COURT: All right. And are there any factual  
01:36:17 24 changes on the part of the Government to the report?

01:36:19 25 MR. KUBIATOWSKI: Not from the Government, your

01:36:19 1 Honor.

01:36:21 2 THE COURT: All right. Mr. Cheronis, any factual  
01:36:22 3 changes to the report?

01:36:22 4 MR. CHERONIS: Not on behalf of Mr. Lewis.

01:36:24 5 THE COURT: Okay. Well, then have you had a chance  
01:36:26 6 to review the report with Mr. Lewis?

01:36:27 7 MR. CHERONIS: Yes, we did. We went over it with  
01:36:29 8 Mr. Lewis.

01:36:30 9 THE COURT: Okay. All right. Then what we're going  
01:36:31 10 to do now is go through the sentencing guideline calculations.  
01:36:34 11 We need to do that first, and then we go to the 3553 factors.

01:36:38 12 So turning, first, to the calculations as set forth  
01:36:43 13 in the probation officer's report at page 7, it is the  
01:36:48 14 Government's position and the probation officer agrees that  
01:36:51 15 the base offense level should be a level 34, based upon the  
01:36:56 16 amount of drugs being between 15 and 20 kilograms.

01:37:00 17 And, Mr. Cheronis, you disagree saying that, in fact,  
01:37:06 18 there were no drugs involved in the stash house proposed  
01:37:09 19 robbery and, therefore, it should be something much less.

01:37:11 20 MR. CHERONIS: Well, that, but in addition to that  
01:37:15 21 and probably -- possibly, at least, more compelling than that  
01:37:19 22 is, if you recall the testimony of Agent Gomez and also on the  
01:37:23 23 videos and things like that, there were words used by Gomez  
01:37:27 24 regarding, There's usually 25 kilos, you know, The last time I  
01:37:31 25 was there there was 25 kilos.

01:37:33 1 It is our position that the nature of the drugs was  
01:37:40 2 somewhat ambiguous from Gomez's own mouth, and that there  
01:37:44 3 wasn't necessarily an agreement to steal 20 to 25 kilograms.  
01:37:48 4 Gomez would use the words like, Been that way before, or,  
01:37:52 5 There's been that amount and that's what it usually is. So  
01:37:54 6 that is pretty much the thrust of our argument that Mr. Lewis  
01:37:57 7 should not be held accountable for that amount of cocaine.

01:38:00 8 THE COURT: Okay. Mr. Kubiowski, from the record,  
01:38:02 9 how --

01:38:03 10 MR. KUBIATOWSKI: We agree with probation, your  
01:38:06 11 Honor. Throughout the -- you heard the evidence. Throughout  
01:38:08 12 the course of the conversations, the amount discussed was  
01:38:11 13 always 15 -- actually more -- 20 kilograms more often than not  
01:38:16 14 was the phrase that was used. Obviously, since it was  
01:38:20 15 prospective, possible they could have thought something else  
01:38:25 16 was going to be there.

01:38:26 17 But I believe the evidence demonstrated that the  
01:38:32 18 defendants expected there to be at least 20 kilograms of  
01:38:35 19 cocaine when they were going into the drug stash house. The  
01:38:38 20 fact that there would be a drug stash house there with several  
01:38:41 21 occupants with armed guns would tend to suggest that there was  
01:38:45 22 going to be a large amount of cocaine there.

01:38:47 23 THE COURT: Okay. Can you cite to the record  
01:38:49 24 specifically regarding the tape recorded conversations as to  
01:38:53 25 where 20 kilos are mentioned?

01:38:56 1 MR. KUBIATOWSKI: Your Honor, I didn't bring those  
01:38:58 2 cites with me, but during the testimony of the -- the  
01:39:07 3 conversations almost uniformly said that he was going to be  
01:39:10 4 picking up 20 kilograms -- they expected 20 kilograms of  
01:39:14 5 cocaine.

01:39:15 6 Any time Agent Lopez -- Gomez did his cover story  
01:39:23 7 during the December 14th meeting with Scott Lewis individually  
01:39:26 8 and during the December 18th meeting where he met with the  
01:39:31 9 three defendants altogether -- I'm sorry -- the -- Vernon  
01:39:38 10 Williams and Mr. Lewis, in those two video- and audio-recorded  
01:39:42 11 sessions, Mr. Gomez repeated his cover story and indicated  
01:39:48 12 that he expected 20 kilograms to be there.

01:39:51 13 THE COURT: Do you have --

01:39:52 14 MR. KUBIATOWSKI: I don't know what those record  
01:39:53 15 cites are, the actual exhibit number, but those tapes would  
01:39:57 16 indicate 20 kilograms.

01:39:59 17 THE COURT: Do you have any response or reply to  
01:40:01 18 that, Mr. Cheronis?

01:40:04 19 MR. CHERONIS: Briefly. It's undisputed, and I think  
01:40:06 20 the Government would agree, that we were dealing -- or at  
01:40:10 21 least Agent Gomez and Mr. Lewis and whoever else was involved  
01:40:11 22 were dealing with a prospective scenario, the details of which  
01:40:17 23 were not completely fleshed out.

01:40:19 24 I think that was part of the nature of the sting  
01:40:22 25 agreement. In other words, this wasn't a situation where



01:40:24 1 Scott Lewis called up Agent Gomez and said, Deliver me 10  
01:40:29 2 kilos of cocaine. In that situation it would be hard for me  
01:40:31 3 to argue that 10 kilograms of cocaine was not what Mr. Lewis  
01:40:35 4 agreed to.

01:40:36 5 In this case the nature of the sting operation was  
01:40:39 6 usually, in the past, it had happened. And I don't think that  
01:40:42 7 that necessarily means that Mr. Lewis was sure or agreed to  
01:40:47 8 the fact that there were going to be 20 to 25 kilograms of  
01:40:50 9 cocaine present during this alleged robbing of this fake  
01:40:57 10 cartel. So they're not going to disagree that this was  
01:40:58 11 prospective, and I think that the prospective nature of the  
01:41:01 12 agreement leaves room for ambiguity.

01:41:04 13 THE COURT: Well, prospective in the sense, however,  
01:41:06 14 that they came to the house -- the stash house on the date in  
01:41:10 15 question to actually effectuate the robbery, right?

01:41:13 16 MR. CHERONIS: No. I mean prospective in the sense  
01:41:15 17 that the actual sting itself was Locito, slash, Agent Gomez  
01:41:19 18 talking about what might be there, based on things that had  
01:41:23 19 been there in the past. So what I'm saying is Agent Gomez  
01:41:27 20 himself, Locito himself, could not have said with certainty to  
01:41:31 21 Scott Lewis or Vernon Williams that there's going to be 25  
01:41:34 22 kilograms of cocaine there.

01:41:35 23 He used words like usually. He used qualifiers. So  
01:41:39 24 my position is that those qualifiers would cut into the actual  
01:41:45 25 agreement to the specific amount.

01:41:47 1 THE COURT: All right. Well, I think the case law is  
01:41:51 2 that the agreed upon amount is the amount that needs to be  
01:41:54 3 used in calculating it. And so, Mr. Kubiowski, you'll need  
01:41:59 4 to go back to your office and get the transcripts and come  
01:42:02 5 back in and show me the agreements, the actual specific  
01:42:07 6 language, because we have a dispute as to what that is.

01:42:11 7 My memory is more in keeping with Mr. Kubiowski's  
01:42:14 8 memory, but I'd like to see whether there was this usually  
01:42:19 9 language or if there was, in fact, an agreement. It was my  
01:42:24 10 recollection that there was, in fact, an agreement. So I'm  
01:42:26 11 sure they're in your office, right?

01:42:27 12 MR. KUBIATOWSKI: Yes, your Honor.

01:42:27 13 THE COURT: Okay.

01:42:28 14 MR. CHERONIS: And I do know it kind of was a sliding  
01:42:30 15 scale. For instance, at times they would say usually and  
01:42:33 16 maybe and at other times they said a specific amount, but I  
01:42:36 17 think looking at the record would clear it up.

01:42:37 18 THE COURT: Okay. Can --

01:42:38 19 MR. KUBIATOWSKI: But Mr. Lewis in his post-arrest  
01:42:41 20 statement also indicated that he expected, he expected to be  
01:42:45 21 robbing 15 to 20 kilograms of cocaine.

01:42:48 22 THE COURT: Okay.

01:42:48 23 MR. KUBIATOWSKI: So even if there's a dispute  
01:42:51 24 regarding the transcripts, that's what he expected --

01:42:51 25 THE COURT: Very good. I'd like to see both of them.

01:42:54 1 Okay. So it's twenty minutes to 2:00. You can do that in ten  
01:42:57 2 minutes?

01:42:57 3 MR. KUBIATOWSKI: I can bring the transcript binder  
01:42:59 4 up, your Honor. What -- the transcripts are not going to  
01:43:02 5 reflect what was played in court. It's going to say that a  
01:43:06 6 recording was played. I can bring up the transcripts of the  
01:43:10 7 recordings that were actually introduced.

01:43:12 8 THE COURT: That's what I need.

01:43:13 9 MR. KUBIATOWSKI: Great.

01:43:14 10 THE COURT: All right. Okay, Marshals, please keep  
01:43:17 11 him here. We're just going to take a break for a few minutes.

01:43:20 12 All right. We'll take a break, and we'll see you in  
01:43:22 13 a few minutes.

01:58:14 14 (Recess taken.)

01:58:14 15 THE CLERK: 07CR7, defendant number 1, USA versus  
01:58:18 16 Scott Lewis.

01:58:22 17 MR. KUBIATOWSKI: Steve Kubiowski representing the  
01:58:24 18 United States.

01:58:26 19 MR. CHERONIS: Damon Cheronis and Tim Fiscella on  
01:58:31 20 behalf of Mr. Lewis.

01:58:31 21 MS. GROTH: Malissa Groth on behalf of Probation.

01:58:37 22 THE COURT: Okay. Mr. Lewis, we're going to continue  
01:58:41 23 the sentencing hearing where we left off.

01:58:43 24 Mr. Kubiowski, you were stating that the testimony  
01:58:46 25 during the trial on the transcripts was for a 15-to-20-kilo

01:58:51 1 deal. Can you support that now with the transcripts?

01:58:53 2 MR. KUBIATOWSKI: Yes, your Honor. In fact, the  
01:58:55 3 transcripts only use the phrase 20. On the December 15th  
01:59:00 4 transcript, which was admitted into evidence, the first video  
01:59:04 5 meeting with Mr. Lewis, at line 82 to 83, Agent Gomez says: I  
01:59:11 6 usually see 20, 20 kilos on the -- 20 bricks right there on  
01:59:16 7 the table.

01:59:17 8 Later on at lines 92 to 93, Agent Gomez continues: I  
01:59:25 9 mean, I'm talking -- these are fucking kilos of cocaine, 20  
01:59:28 10 kilos of cocaine is what I usually see right there, they're  
01:59:31 11 cutting up, okay.

01:59:33 12 Later on in that same video meeting, Agent Gomez says  
01:59:38 13 at line 299: Well, you're going to hit this place for  
01:59:42 14 probably 20 keys, man, 20 keys of cocaine.

01:59:45 15 In the December 18th meeting where the defendant and  
01:59:49 16 his codefendant, Mr. Williams, is present, at line 169, Agent  
01:59:54 17 Gomez says: But when I go in there, what I see -- I usually  
01:59:57 18 see, I'm talking 20 fucking bricks, 20 kilos of cocaine.

02:00:01 19 And later on, line 187 in that same meeting,  
02:00:06 20 December 18th: Yeah, so I usually see them cutting probably  
02:00:09 21 20.

02:00:10 22 Your Honor, I believe the only time the number 15 was  
02:00:14 23 ever introduced at trial was during the defendant's  
02:00:17 24 post-arrest statement where he indicated that he thought or  
02:00:21 25 expected to be robbing 15 to 20 kilograms of cocaine. There

02:00:27 1 was not a number that was introduced during any of the  
02:00:29 2 recorded conversations.

02:00:30 3 THE COURT: Okay. All right. Now that we have the  
02:00:31 4 transcript cites for the record, Mr. Cheronis, did you want to  
02:00:36 5 embellish your argument, sir?

02:00:38 6 MR. CHERONIS: I think it was more -- it was  
02:00:39 7 consistent with what I had said initially. Usually, usually,  
02:00:43 8 probably, usually.

02:00:44 9 And what I was trying to articulate earlier, and if I  
02:00:47 10 didn't do a proper job, I'll try to do my client justice here.  
02:00:51 11 Locito in this case, his only real job -- let's believe this  
02:00:54 12 wasn't a sting. Let's believe this was a real conspiracy or  
02:00:57 13 let's believe that he's working for a drug cartel. By the  
02:01:00 14 Government's own admission and by Locito's own admission, he  
02:01:03 15 has no say in the amount of drugs that are going to be  
02:01:07 16 delivered.

02:01:07 17 All he is in this conspiracy is a guy who gets a call  
02:01:11 18 and has to go to a stash house. In other words, even under  
02:01:14 19 this fictitious scenario he's not the one who is driving the  
02:01:18 20 amount of cocaine that's going to arrive at a specific place.  
02:01:20 21 So he says words like probably, usually, usually, because he  
02:01:24 22 can't know.

02:01:25 23 So my position is based on his inability to know,  
02:01:27 24 based on his using the words probably, usually, based on using  
02:01:31 25 those qualifiers, that the agreed-upon amount was not

02:01:35 1 sufficiently shown and that, obviously, we're left with at  
02:01:39 2 least the 5 kilograms that the jury returned a verdict on, but  
02:01:42 3 I would suggest then that that would be the base offense  
02:01:44 4 level, because to drive it up based on qualified usual lies and  
02:01:48 5 probables, I would suggest, would not be proper.

02:01:53 6 THE COURT: Okay. Anything else, Mr. Kubiowski?

02:01:55 7 MR. KUBIATOWSKI: Again, the post-arrest statement,  
02:01:57 8 he anticipated that he was going to be robbing 15 to 20  
02:02:02 9 kilograms of cocaine, your Honor, which corroborates what was  
02:02:05 10 in the transcripts.

02:02:06 11 And there's -- it's a sting operation, your Honor.  
02:02:09 12 So you're never going to know exactly what's there because it  
02:02:13 13 doesn't exist to begin with. But based on these recorded  
02:02:16 14 conversations and the defendants never asked whether or not  
02:02:21 15 there was ever going to be more or less than 20 kilograms, I  
02:02:27 16 believe it's reasonable to infer that they expected to be  
02:02:30 17 stealing at least 20 kilograms of cocaine.

02:02:33 18 MR. CHERONIS: And I --

02:02:33 19 MR. KUBIATOWSKI: That was the whole point of the  
02:02:35 20 word usually.

02:02:35 21 MR. CHERONIS: And I don't want to be the annoying  
02:02:37 22 kid in class who keeps raising his hand, but if I could just  
02:02:41 23 add one final issue.

02:02:42 24 You sat in front of a jury trial, your Honor, a week  
02:02:44 25 after ours, and a codefendant was tried in that case and I

02:02:47 1 know it doesn't necessarily have any binding effect on you,  
02:02:50 2 but they found that it wasn't even a measurable -- it wasn't  
02:02:52 3 even 5 kilograms; it was only a measurable amount. So I think  
02:02:56 4 reasonable minds can certainly differ as to the amount here,  
02:02:59 5 and the reason they can differ is because it was ambiguous.

02:03:03 6 THE COURT: All right. I think that the evidence  
02:03:06 7 that was presented at trial was twofold. I think that the  
02:03:11 8 post-arrest statement does corroborate the previous recordings  
02:03:16 9 and that he did admit that he believed it was between 15 and  
02:03:20 10 20 kilograms, and that admission is supported by the  
02:03:23 11 transcript cites that Mr. Kubiowski stated.

02:03:26 12 I think that the clarifying language of usually see,  
02:03:32 13 or I usually see them cutting, or I usually hit this place  
02:03:37 14 for, is essentially his understanding that that would be the  
02:03:41 15 approximate amount that he would be getting, which is 20  
02:03:44 16 kilograms of cocaine, and that's supported by his own  
02:03:47 17 admission.

02:03:47 18 So I do find that the amount of drugs that was agreed  
02:03:51 19 upon in the house/stash house robbery was the 15 to 20  
02:04:00 20 kilograms of cocaine. Which is a level 34, correct?

02:04:02 21 MR. KUBIATOWSKI: That's correct, your Honor.

02:04:05 22 THE COURT: All right. That moves us to the specific  
02:04:07 23 offense characteristic of -- excuse me -- the adjustment for  
02:04:22 24 role in the offense, which is the one where we have a dispute  
02:04:25 25 regarding whether or not he deserves two levels for being an

02:04:29 1 organizer or leader.

02:04:30 2 I'll hear from the Government first.

02:04:32 3 MR. KUBIATOWSKI: Your Honor, we, again, stated our  
02:04:34 4 position, I think, clearly in our written memorandum. It was  
02:04:38 5 obvious during the course of the trial that the defendant had  
02:04:42 6 gotten a crew and he actually brought that crew to two  
02:04:49 7 subsequent meetings, on December 18th, 2006 and January 4th,  
02:04:54 8 2007, namely, Vernon Williams, B, and subsequently on the day  
02:04:59 9 of the arrest, January 4th, Lavoyce Billingsley.

02:05:03 10 Based on that recruitment, which the Seventh Circuit  
02:05:06 11 has indicated is a factor that weighs heavily in favor of the  
02:05:10 12 leadership enhancement, we believe that the two-level  
02:05:12 13 enhancement is appropriate in this instance.

02:05:14 14 THE COURT: All right. Mr. Cheronis?

02:05:16 15 MR. CHERONIS: We'll rely on our written memorandum  
02:05:19 16 for this portion, Judge.

02:05:20 17 THE COURT: Okay. I think the evidence was clear  
02:05:22 18 that Mr. Lewis brought in Mr. Williams and Mr. Billingsley.  
02:05:28 19 He was the only one who had the dealings with the confidential  
02:05:31 20 informant and the only reason that Williams and Billingsley  
02:05:35 21 became involved, and that recruitment gives him the two-level  
02:05:38 22 enhancement. So he is going to receive those.

02:05:40 23 The next is the adjustment for obstruction of  
02:05:43 24 justice. And that is for his testimony at trial regarding  
02:05:48 25 what occurred to him with the CI during the months leading up



02:05:53 1 to his involvement in the robbery.

02:05:55 2 And I'll hear from the Government first.

02:05:57 3 MR. KUBIATOWSKI: Your Honor, as we set forth in our  
02:05:59 4 written memorandum, the defendant took the stand, and I  
02:06:09 5 believe it's very clear that the jury must have concluded that  
02:06:11 6 his testimony was false, based on its verdict on Counts 1 and  
02:06:16 7 3.

02:06:17 8 Some of the instances during his cross-examination,  
02:06:22 9 when it was apparent that his testimony was false, was his  
02:06:27 10 repeated protestations that he was scared of the confidential  
02:06:33 11 informant, Rojo, when on January 4th he still went to see Rojo  
02:06:38 12 even though he had allegedly upset him by saying that he was  
02:06:42 13 going to back out of the robbery.

02:06:45 14 His story that he was unable to obtain a thousand  
02:06:50 15 dollars to pay the debt that he allegedly owed Rojo. His  
02:06:55 16 story that he was unable to get that money from any other  
02:06:57 17 source and that he was willing to risk his own life by rushing  
02:07:04 18 a stash house to pay a \$1,000 drug debt, these are instances  
02:07:10 19 which the jury must have disbelieved in order to reach the  
02:07:15 20 verdict that it did. And accordingly, under the guidelines, I  
02:07:18 21 believe the obstruction enhancement would apply.

02:07:20 22 THE COURT: Okay. Mr. Cheronis?

02:07:22 23 MR. CHERONIS: I could not find a point in this  
02:07:24 24 sentencing memorandum where I disagree more with the  
02:07:27 25 Government than the enhancement for obstruction of justice.

02:07:30 1 It is absolutely possible that the jury believed every word of  
02:07:35 2 what Scott Lewis said and still decided that he was not  
02:07:38 3 coerced and that he was not entrapped.

02:07:41 4 He got on the witness stand and he did not say that,  
02:07:46 5 you know, he wasn't involved in this. He gave his reasons for  
02:07:49 6 being involved. And the Government's claim that Scott Lewis'  
02:07:54 7 testimony -- and I believe the language they use in the  
02:07:58 8 sentencing memorandum -- was absurd on its face, well, I take  
02:08:01 9 issue with that and I do it for several reasons.

02:08:05 10 Initially -- and I made a footnote in the sentencing  
02:08:06 11 memorandum -- the Government has turned over to defense  
02:08:09 12 counsel subsequent to the trial in this case information  
02:08:14 13 regarding Rojo, that he denies, that has to do with a  
02:08:19 14 different case. But the information -- and I have copies of  
02:08:22 15 the 302s, I didn't want to include them in the sentencing  
02:08:25 16 package -- but basically that Rojo was selling drugs, dealing  
02:08:28 17 drugs, intimidating people. This is information that a  
02:08:31 18 different witness, who had nothing to do with Lewis, told the  
02:08:35 19 Government.

02:08:35 20 And --

02:08:36 21 THE COURT: During the time period, during the same  
02:08:38 22 time period?

02:08:39 23 MR. CHERONIS: During -- during --

02:08:40 24 MR. KUBIATOWSKI: A year later.

02:08:41 25 MR. CHERONIS: A year and a half later.

02:08:43 1 MR. KUBIATOWSKI: A year and a half later.

02:08:44 2 MR. CHERONIS: Not during the same time period, but  
02:08:46 3 it certainly, to some extent, corroborates what Lewis said.  
02:08:46 4 And, of course, Rojo denied it, so there was no issue of --  
02:08:53 5 making issue out of it. It happened later anyway. But we  
02:08:55 6 have information now --

02:08:56 7 THE COURT: So we have another witness testifying  
02:08:58 8 about Rojo's involvement with drug dealing that -- what you're  
02:09:03 9 saying is that would corroborate his statement to the jury.

02:09:06 10 MR. CHERONIS: There is a person who was debriefed by  
02:09:09 11 the Government. And that person basically said that while  
02:09:13 12 Rojo was an informant for the Government, he was also really a  
02:09:18 13 drug dealer. He was also dealing drugs. He was also doing  
02:09:23 14 things that would be consistent with what Mr. Lewis said, so  
02:09:27 15 it didn't just come out of holed cloth.

02:09:30 16 I mean, there was another person out there saying  
02:09:33 17 Rojo was selling drugs and being an informant, working both  
02:09:35 18 sides of the street.

02:09:35 19 THE COURT: Can I see the 302?

02:09:45 20 MR. CHERONIS: We do have a copy for you.  
02:09:59 21 Here it is.

02:10:02 22 THE COURT: Thank you.

02:11:20 23 Okay. You can pass that back, please.

02:11:23 24 All right. Anything you want to add to the  
02:11:25 25 obstruction, either side?

02:11:27 1 MR. CHERONIS: No.

02:11:28 2 MR. KUBIATOWSKI: No, your Honor.

02:11:28 3 THE COURT: Okay. I agree with Mr. Cheronis that  
02:11:32 4 that testimony could very easily have been interpreted by the  
02:11:37 5 jury to meaning that it was not legally sufficient to rise to  
02:11:42 6 the level of extraordinary inducement and, therefore, I don't  
02:11:51 7 think that they needed to inherently need to find that he was  
02:11:54 8 lying.

02:11:54 9 I think he admitted to his conduct, and he gave his  
02:11:57 10 reasons for the conduct. And I think that that is not  
02:12:00 11 inconsistent with the jury's conviction, because I think the  
02:12:04 12 jury could have believed him and said in spite of that, it is  
02:12:11 13 insufficient to have been entrapment. And, therefore, I'm not  
02:12:16 14 giving a two-level enhancement for obstruction of justice.

02:12:18 15 All right. That brings us to an adjusted offense  
02:12:21 16 level of 36.

02:12:22 17 And we are now at the other count, which is for the  
02:12:26 18 firearm used in the commission of the trafficking offense and  
02:12:31 19 the conviction, I believe, there is to run consecutive to any  
02:12:38 20 sentence imposed upon the drug robbery conviction.

02:12:42 21 And so do we get points for grouping on that?

02:12:46 22 MR. KUBIATOWSKI: Your Honor, I'm sorry to interrupt.  
02:12:50 23 Acceptance of responsibility was an issue that was raised by  
02:12:53 24 the defendant as well.

02:12:53 25 THE COURT: Oh, okay. Go ahead, Mr. Cheronis.

02:12:56 1 MR. CHERONIS: If I may, your Honor, regarding  
02:12:58 2 acceptance of responsibility, and I've read the cases that  
02:13:00 3 basically say that entrapment is kind of the antithesis of  
02:13:06 4 acceptance of responsibility, because what somebody is saying  
02:13:07 5 is, I did it but it absolutely wasn't my fault. I was  
02:13:10 6 coerced. I was pressured.

02:13:12 7 But I think if you look at this on a case specific  
02:13:15 8 scenario, which is what I'm asking you to do, is Mr. Lewis did  
02:13:20 9 say the Government played a hand in what he did. But at the  
02:13:23 10 same point, I mean, there were times when he was being  
02:13:26 11 cross-examined and, you know, Mr. Kubiowski was asking  
02:13:28 12 questions that I would suggest he was expecting a different  
02:13:31 13 response from Mr. Lewis, but Mr. Lewis would say, Oh, no, I  
02:13:34 14 was going to rob it. I knew what was going on, or, I was  
02:13:37 15 going to do it.

02:13:37 16 I mean, this is kind of almost that hybrid case where  
02:13:41 17 all he said was, You know what? I was involved but the  
02:13:45 18 Government pushed me over the edge. I don't necessarily think  
02:13:47 19 that doesn't mean he accepted responsibility for it. What he  
02:13:52 20 was saying was, The Government shared responsibility, and  
02:13:54 21 maybe the Government was more responsible.

02:13:57 22 And because he went to trial and because he asked a  
02:14:00 23 jury -- who after three days rejected his defense, I don't  
02:14:03 24 think that means that he didn't accept responsibility.

02:14:07 25 He accepted their verdict, and he asked them to judge

02:14:11 1 him under the law and judge him under the facts of this  
02:14:14 2 specific case. And I would request -- and the Court can give  
02:14:18 3 acceptance of responsibility after trial. It doesn't happen  
02:14:21 4 often. I know that. But we're requesting it, based on the  
02:14:24 5 specific facts that you saw and that played out throughout the  
02:14:27 6 course of this trial.

02:14:28 7 THE COURT: Well, first, I think we need to verify  
02:14:30 8 between the two kinds of acceptance. Your argument really  
02:14:34 9 goes to the two levels of acceptance and not to the first,  
02:14:37 10 because -- I mean, the third level. Because the third point  
02:14:40 11 of acceptance essentially saves the Government of the trouble  
02:14:43 12 of going through trial and doing the work.

02:14:45 13 So, really, you're talking about two points for  
02:14:48 14 acceptance, which you say is consistent with the testimony  
02:14:50 15 where he did admit to his involvement and simply required the  
02:14:54 16 Government to step up and do its case as it's required to do  
02:15:00 17 and meet its burden. Am I hearing you correctly?

02:15:03 18 MR. CHERONIS: Exactly. I would like three points,  
02:15:05 19 but I think we'll have enough trouble getting two. But I  
02:15:06 20 think the two is where we're certainly requesting, because a  
02:15:08 21 trial is not necessarily inconsistent with the acceptance of  
02:15:11 22 responsibility.

02:15:11 23 THE COURT: Okay. Mr. Kubiowski?

02:15:12 24 MR. KUBIATOWSKI: Your Honor, the Seventh Circuit  
02:15:14 25 precedent that we set out in our memorandum, particularly the

02:15:17 1 Rector case, which Mr. Cheronis alluded to. Entrapment by  
02:15:21 2 definition precludes the acceptance of responsibility in  
02:15:27 3 almost every instance, and Seventh Circuit precedence has been  
02:15:31 4 right down the line on this.

02:15:32 5 It's basically saying it's -- I did it but it's  
02:15:36 6 somebody else's fault. And here he's saying that, The  
02:15:38 7 Government pushed me over the edge, but that's not an  
02:15:41 8 acceptance of responsibility consistent with Seventh Circuit  
02:15:43 9 case law.

02:15:44 10 THE COURT: Right. I think the Seventh Circuit is  
02:15:47 11 very clear on this one, which essentially says, When you go  
02:15:51 12 forward with the entrapment defense, you're essentially  
02:15:55 13 abdicating that responsibility. You're saying, as they said  
02:15:59 14 in the Rector case, that I'm not the one that's responsible.  
02:16:02 15 It's somebody else's responsibility. It's somebody else's  
02:16:04 16 fault. And, therefore, I am going to deny the request to give  
02:16:09 17 an acceptance of responsibility.

02:16:09 18 That leaves us to a level 36, and I believe there is  
02:16:14 19 a two-point grouping requirement, correct?

02:16:20 20 (No response.)

02:16:20 21 THE COURT: Because Count 3 is excluded from  
02:16:23 22 grouping -- oh, no, there is not. It's excluded, so we're at  
02:16:26 23 36.

02:16:26 24 Now, let's talk about his criminal history. I know  
02:16:29 25 Mr. Cheronis is concerned about it being overrepresented, and

02:16:33 1 I'd like to go through each one of these convictions that's  
02:16:37 2 counting.

02:16:38 3 We have the unlawful possession of weapons by a felon  
02:16:42 4 when he was twenty years old, and that he received two --  
02:16:46 5 excuse me -- three points for. He was found guilty and  
02:16:50 6 sentenced to eight and a half years.

02:16:52 7 There is the one point that he receives for the  
02:16:56 8 giving of a false name and date of birth to a law enforcement  
02:17:00 9 officer where he was found guilty and received 40 days.

02:17:04 10 There is the three points for the theft in the  
02:17:08 11 Circuit Court of Adams County where he was originally  
02:17:16 12 sentenced to a matter of days, but then found guilty of  
02:17:19 13 violating probation and got two years.

02:17:23 14 And then there's the two points for the domestic  
02:17:26 15 battery where he received 270 days.

02:17:30 16 And that has led him to a criminal history category  
02:17:38 17 of IV, correct?

02:17:39 18 MR. KUBIATOWSKI: That's correct, your Honor.

02:17:39 19 MR. CHERONIS: Yes.

02:17:40 20 THE COURT: All right. Now, let me hear from you,  
02:17:42 21 first, Mr. Cheronis.

02:17:44 22 MR. CHERONIS: As I stated in the memorandum, it was  
02:17:46 23 that odd -- that odd scenario during an entrapment trial where  
02:17:50 24 a defendant, to some extent, can get on the witness stand and  
02:17:53 25 explain to the jury, as Mr. Lewis did, at least some of the



02:17:56 1 conduct that led to those convictions.

02:17:58 2 I have not received anything from the Government to  
02:18:00 3 dispute Mr. Lewis' testimony as to what happened. I believe  
02:18:04 4 he testified that regarding the felon in possession of a  
02:18:07 5 firearm count, he was at a party and there was a struggle with  
02:18:12 6 somebody with a gun, that he basically wrestled the gun away  
02:18:16 7 and fired it into the air. That is certainly different than  
02:18:19 8 somebody who owns a gun, is a convicted felon, and is either  
02:18:24 9 carrying it on his person or driving around. I mean, that  
02:18:28 10 specific instance, I would suggest, mitigates the actual  
02:18:31 11 criminal history point that he receives.

02:18:32 12 Also, the theft case -- one of the theft cases -- and  
02:18:38 13 I think this was actually excluded from trial -- but it was  
02:18:42 14 the issue where Mr. Lewis was, like, twenty years old and he  
02:18:46 15 broke into a bar with some friends and took some liquor.

02:18:53 16 I don't want to say 90 percent of my friends in high  
02:18:56 17 school would probably be guilty of that same crime, but it was  
02:18:58 18 something that was like a youthful indiscretion, I would  
02:19:01 19 suggest, as opposed to some type of serious, serious theft.  
02:19:05 20 It doesn't necessarily mean it's not important, but I think it  
02:19:10 21 can be taken with a grain of salt. So I think that those two  
02:19:15 22 instances are really overrepresented by the amount of points  
02:19:20 23 that he receives for them.

02:19:20 24 THE COURT: Well, I don't even -- I'm not sure where  
02:19:22 25 those facts are, because I have the one burglary conviction

02:19:27 1 when he was seventeen, for which he didn't receive any points.  
02:19:32 2 He was found guilty, but he didn't get any points in his  
02:19:36 3 criminal history for that.

02:19:37 4 Then we have the unlawful possession of a weapon,  
02:19:40 5 which is the discharge of the firearm where you provided the  
02:19:45 6 facts that he wrestled it away from someone.

02:19:49 7 Then there's the giving of the false name to the  
02:19:53 8 police. And then there's the Christmas present theft when he  
02:20:00 9 was 24 years old.

02:20:02 10 MR. CHERONIS: And that theft, Judge, the Christmas  
02:20:05 11 present theft, which sounds really bad, but he was actually, I  
02:20:09 12 believe, found to be in possession of something that was  
02:20:11 13 stolen as opposed to having broken into the house, I believe,  
02:20:15 14 was what he ended up pleading guilty to, being in possession  
02:20:19 15 of stolen goods, and the residential burglary and those other  
02:20:22 16 issues were dropped.

02:20:24 17 THE COURT: And then the last one is the domestic  
02:20:27 18 battery. So I don't know where the liquor store felon --

02:20:31 19 MR. CHERONIS: That --

02:20:32 20 THE COURT: I don't think you got any points for it.

02:20:34 21 MR. CHERONIS: But the felon in possession of a  
02:20:36 22 firearm, I believe, was something that was counted --

02:20:38 23 THE COURT: Okay.

02:20:38 24 MR. CHERONIS: -- towards his total number.

02:20:40 25 THE COURT: Okay. Mr. Kubiowski?

02:20:43 1 MR. KUBIATOWSKI: Your Honor, the defendant, we  
02:20:45 2 believe, has gotten the benefit of the doubt as far as his  
02:20:47 3 criminal history points here, two convictions for which he  
02:20:50 4 received no points.

02:20:52 5 THE COURT: What, the juvenile one?

02:20:54 6 MR. KUBIATOWSKI: Right.

02:20:54 7 THE COURT: And then which other one, the deceptive  
02:20:57 8 practices?

02:20:58 9 MR. KUBIATOWSKI: That's correct, your Honor.

02:20:59 10 THE COURT: And why did he not get points for that?

02:21:03 11 MR. KUBIATOWSKI: I think it was -- both of them were  
02:21:06 12 on account of age, your Honor.

02:21:10 13 THE COURT: Because of age?

02:21:11 14 MR. KUBIATOWSKI: Wait, the deceptive practices --

02:21:14 15 THE COURT: Well, it doesn't make sense, because  
02:21:15 16 the --

02:21:15 17 MR. KUBIATOWSKI: The first one, the burglary from  
02:21:17 18 1991 was because of its age.

02:21:19 19 THE COURT: Okay. What about the deceptive  
02:21:21 20 practices?

02:21:21 21 MR. KUBIATOWSKI: The deceptive practice, no, that  
02:21:31 22 was a trespass that he wasn't -- but that's correct, it's not  
02:21:34 23 supposed to count.

02:21:36 24 The deceptive practice was giving the false name, and  
02:21:39 25 he did receive a point for that.

02:21:40 1 THE COURT: No. I'm referring to line 235, the  
02:21:46 2 deceptive practice in the Circuit Court of Adams County where  
02:21:50 3 he pled guilty when he was 26 years old for the check,  
02:21:55 4 \$155.13, an Athlete's Foot account.

02:22:00 5 MR. KUBIATOWSKI: I believe that wasn't counted just  
02:22:02 6 because that's classified as one of the types of convictions  
02:22:05 7 that you do not receive any criminal history points for.

02:22:08 8 THE COURT: Oh, okay.

02:22:09 9 MR. KUBIATOWSKI: There's a number --

02:22:10 10 THE COURT: And is that the benefit you're saying  
02:22:12 11 then?

02:22:14 12 (No response.)

02:22:14 13 THE COURT: What is the benefit of the two  
02:22:15 14 convictions --

02:22:16 15 MR. KUBIATOWSKI: I'll strike that comment, your  
02:22:16 16 Honor.

02:22:18 17 THE COURT: Okay. So then the criminal history  
02:22:22 18 category V is substantiated by what?

02:22:23 19 MR. KUBIATOWSKI: It's IV, it's a criminal history  
02:22:27 20 IV, your Honor.

02:22:27 21 THE COURT: I'm sorry, IV.

02:22:27 22 MR. KUBIATOWSKI: He's got nine points, which is at  
02:22:30 23 the top end of that history.

02:22:34 24 He's had opportunities to rehabilitate, even with the  
02:22:41 25 four convictions that are having been counted towards the

02:22:46 1 criminal history. He's had opportunities. He's had brushes  
02:22:49 2 with the criminal justice system, yet he continues or has  
02:22:53 3 continued to break the law.

02:22:57 4 So we believe that the criminal history, as reported,  
02:23:03 5 criminal history category of IV with nine points, does  
02:23:06 6 sufficiently represent his criminal history.

02:23:08 7 THE COURT: Okay. Anything you want to add, sir?

02:23:10 8 MR. CHERONIS: I don't necessarily want to get into  
02:23:12 9 my 3553(a) factors yet --

02:23:14 10 THE COURT: Okay.

02:23:14 11 MR. CHERONIS: -- but for the reasons stated in the  
02:23:16 12 memorandum and for what I've stated earlier, I would suggest  
02:23:18 13 that it's overrepresented.

02:23:19 14 THE COURT: Okay. I don't see any sufficient basis  
02:23:22 15 to challenge the points that he received for his criminal  
02:23:27 16 history category IV, such that, for example, something was  
02:23:31 17 overcounted, where there was another court case where it was  
02:23:34 18 counted twice, et cetera.

02:23:36 19 So I will factor in the type of criminal history that  
02:23:40 20 he has when I review the 3553 factors, but he'll remain a  
02:23:45 21 category IV, which means we're at a level 36, category IV, and  
02:23:50 22 he's facing 262 months to 327 months.

02:24:02 23 Does everyone agree?

02:24:05 24 MR. KUBIATOWSKI: The Government agrees, your Honor.

02:24:08 25 THE COURT: Okay.

02:24:08 1 MR. KUBIATOWSKI: That's on Count 1.

02:24:09 2 THE COURT: That's on Count 1.

02:24:11 3 Now, Count 2 is a mandatory minimum or a statutory  
02:24:16 4 sentence of 60 months that's subsequent to any sentence.

02:24:18 5 Is everyone in agreement with that?

02:24:20 6 MR. CHERONIS: Yes.

02:24:21 7 THE COURT: Okay. So the defendant is facing 262  
02:24:26 8 plus 60 months on the low end, which is 322 months in prison.

02:24:31 9 And now I will hear from the Government as to where  
02:24:35 10 you believe he should be sentenced, pursuant to taking into  
02:24:39 11 account all of the 3553 factors that the Court must now take  
02:24:43 12 into account.

02:24:46 13 MR. KUBIATOWSKI: Your Honor, we respectfully  
02:24:48 14 recommend a sentence within the guidelines range. When  
02:24:51 15 reviewing the 3553(a) factors, the seriousness of the offense  
02:24:56 16 is one of the factors that the Court must consider.

02:24:59 17 This was a very serious crime. It's a crime that  
02:25:02 18 involved violence. It's a crime that involved rushing into a  
02:25:06 19 stash house where the occupants would be forcibly subdued at  
02:25:12 20 gunpoint, stripped, tied down, and then 20 kilograms of  
02:25:17 21 cocaine -- cocaine worth in excess of \$400,000, based on a  
02:25:24 22 \$20,000 value per kilo -- would be stolen.

02:25:29 23 This is an offense where the defendant recruited  
02:25:32 24 additional individuals into the conspiracy.

02:25:39 25 The defendant has shown, with his criminal history,

02:25:47 1 that he recidivates.

02:25:52 2 Deterrence, another one of the factors that the Court  
02:25:55 3 must consider, is critical here especially for -- in an  
02:26:01 4 instance like the defendant, where it's been shown that his --  
02:26:08 5 that he has a history of -- with the criminal justice system,  
02:26:15 6 that continues to break the law, and this time he decided to  
02:26:18 7 break the law and engage in a particularly violent and serious  
02:26:23 8 crime.

02:26:25 9 Now, certainly, we understand that he has a support  
02:26:27 10 network. He has a family. He should have relied on that  
02:26:32 11 support network rather than put his own life at risk by  
02:26:38 12 engaging in this type of violent conduct.

02:26:42 13 The seriousness of the offense, the deterrence, which  
02:26:46 14 is much needed to keep Mr. Lewis off the streets and keeping  
02:26:52 15 the public safe would, in the Government's view, warrant a  
02:26:56 16 sentence within the guidelines range.

02:26:59 17 THE COURT: Okay. Mr. Cheronis?

02:27:02 18 MR. CHERONIS: Thank you, Judge Kendall. This was a  
02:27:06 19 difficult sentencing to prepare for for a lot of reasons. I  
02:27:12 20 think you've certainly sat in front of enough jury trials and  
02:27:15 21 tried enough jury trials, as a prosecutor, to know that -- and  
02:27:18 22 I said this during my closing argument -- everything's not  
02:27:21 23 black and white.

02:27:22 24 And I think if ever there is a case where you're  
02:27:26 25 dealing with a very gray area, you're talking about this case.

02:27:30 1 And in almost every sentencing I've ever handled -- and I  
02:27:34 2 don't want to stray too far from it -- but, you know, I am of  
02:27:39 3 the opinion that there is a time to be as remorseful and  
02:27:43 4 circumspect and apologetic as possible. And I don't  
02:27:48 5 necessarily think Mr. Lewis disagrees with me, but I will say  
02:27:51 6 this, that the case that you saw was not derived or started  
02:27:58 7 or, as Mr. Kubiowski just said, decided by Scott Lewis.

02:28:03 8 And I did point out in my sentencing memorandum some  
02:28:07 9 issues that I would request that you take into consideration  
02:28:11 10 regarding sentencing entrapment and sentencing manipulation.  
02:28:15 11 But as 3553(a) talks about, you have to talk about the nature  
02:28:17 12 and the circumstances of the offense.

02:28:19 13 And I would suggest that you also have to look at the  
02:28:22 14 investigation in this case and what happened and what happened  
02:28:24 15 at trial, and some of the stuff that has come up subsequent to  
02:28:28 16 that, that we now know at least -- maybe not know, but there  
02:28:32 17 are other things out there about this Rojo character who --  
02:28:35 18 that somewhat corroborated what Mr. Lewis said.

02:28:38 19 And there was a great letter that was written -- and  
02:28:40 20 there's a question that I think Mr. Lewis is going to be  
02:28:42 21 asking himself, that I've asked myself, that possibly you've  
02:28:45 22 asked yourself, if Mr. Lewis never met Rojo, would he be here?  
02:28:49 23 Would he be in a jail somewhere? Would he be begging a Court  
02:28:52 24 for mercy? Or would he have continued upon his education?  
02:28:56 25 Would he have tried to get custody of his daughter? And would



02:28:59 1 he have walked the line, so to speak? And we don't know that.

02:29:03 2 You know, the world is a difficult place enough to  
02:29:06 3 live in for some people without having people like Rojo out  
02:29:10 4 there who are preying on them. And there are -- and I've  
02:29:14 5 thought about this. There are places for sting separations.  
02:29:16 6 I'm not saying that they're completely invaluable.

02:29:20 7 I mean, we've watched the news recently. I mean,  
02:29:21 8 sting operations have been responsible for stopping possible  
02:29:24 9 terrorist attacks, and I'm not going to sit here as an  
02:29:28 10 American citizen and say they are not somewhat worthwhile.

02:29:30 11 But in this case and the facts of this case, I mean,  
02:29:33 12 this, crew, Lewis, Williams, and Billingsley? I mean, it's  
02:29:38 13 almost like -- and I'm not trying to make light of this --  
02:29:41 14 it's like the Three Stooges. I mean, they were -- it was  
02:29:44 15 clear that they were there, and it was clear that they were  
02:29:46 16 not just there by their own doing. And I think that this  
02:29:49 17 Court can take that into consideration.

02:29:50 18 That being said, Mr. Lewis, even if he was coerced,  
02:29:55 19 even if he was entrapped, made some horrible decisions  
02:29:58 20 throughout the course of the facts that led up to this trial.  
02:30:02 21 He made some horrible decisions. He should have gone to the  
02:30:05 22 police, if he was afraid for his life. He should have gotten  
02:30:08 23 the money from someone else. He should have done something.  
02:30:10 24 He should have stopped. And for that he's going to have a lot  
02:30:14 25 of time to think about it. But I think you cannot take away

02:30:18 1 the type of investigation that went into this.

02:30:21 2 And I ask you to take that into consideration with  
02:30:24 3 sentencing entrapment, with sentencing manipulation. I mean,  
02:30:27 4 they sat back there probably at a table at an ATF office and  
02:30:30 5 said, Hey, 25 kilograms, that's going to jack up the  
02:30:34 6 guidelines. I mean, was that necessary? They came up with  
02:30:36 7 this number.

02:30:36 8 And that puts Mr. Lewis in what I would consider a  
02:30:41 9 Draconian sentence, a very high level. So I would ask you to  
02:30:45 10 look at the nature and circumstances of this specific offense  
02:30:48 11 from the facts you heard at trial. And I would suggest that  
02:30:50 12 with everything you saw, with Agent Gomez, with his not  
02:30:55 13 working audio equipment, with all that other stuff he said on  
02:30:58 14 the witness stand, with -- speaking of absurd testimony --  
02:31:01 15 with that testimony, you can have a variance pursuant to  
02:31:06 16 3553(a). Because my position on what the jury did in this  
02:31:09 17 case was they probably didn't like anybody in this case, but  
02:31:12 18 they said, The tapes were pretty bad. So I think the nature  
02:31:15 19 and circumstances of this case could actually warrant a  
02:31:18 20 variance or a departure.

02:31:21 21 As far as Mr. Lewis is concerned, there is some very  
02:31:24 22 interesting letters that were sent to this Court, and I've  
02:31:26 23 seen a lot of letters and I've compiled them. And I know you  
02:31:29 24 took time to read them, but I would like to point out a few, I  
02:31:34 25 guess, excerpts from the letters, because this shows the other

02:31:37 1 side of Scott Lewis.

02:31:38 2 I mean, I guess this is kind of the Scott Lewis that  
02:31:42 3 could have been, that once was and could have been. I mean,  
02:31:45 4 these are letters from people who don't just say, Yeah, he was  
02:31:48 5 a good guy. He was a guy who would cut my grass for me if I  
02:31:51 6 had a bum ankle.

02:31:54 7 I mean, you have a letter from a man who Scott Lewis  
02:31:55 8 raised his son. I mean, how often do you see that when the  
02:31:59 9 father of a child that somebody else raises actually writes a  
02:32:04 10 letter? Scott Lewis is raising a kid that isn't his. It's  
02:32:07 11 Rachel Roberts' son, and Scott Lewis is living with that  
02:32:11 12 family and treating him as his son. And the real father  
02:32:14 13 writes a letter to a judge saying, Scott Lewis is a great guy  
02:32:17 14 because he raised my son.

02:32:18 15 That's the history and characteristics we're talking  
02:32:22 16 about at this point. The verdict's in, but now we can look at  
02:32:26 17 the person that Scott Lewis was when this happened. He was a  
02:32:30 18 person who would, you know, put the kids to bed. He was the  
02:32:34 19 person who would stay home. He was a person who was  
02:32:38 20 respectful.

02:32:39 21 And, I mean, these aren't just short letters, and I  
02:32:41 22 know you read them. And, you know, these are letters that  
02:32:45 23 really can touch, I would suggest, the judge. And the reason  
02:32:50 24 I'm saying that, I was just at a seminar and Judge Coar said  
02:32:54 25 that letters are extremely important, and I think they are,

02:32:57 1 because I only know Scott Lewis through being appointed on  
02:33:00 2 this case.

02:33:01 3 I haven't lived with him. I didn't know him before  
02:33:03 4 this. But people who have known him have stepped up for him  
02:33:06 5 and said, You know what? He's not that bad. He's a person --  
02:33:10 6 he's a person who was a son. He was a person who is a father.  
02:33:13 7 He was a person who was trying to get his life back on track  
02:33:15 8 and it was horribly derailed.

02:33:17 9 And I would suggest to the Court that looking at  
02:33:21 10 these letters paints a picture of Scott Lewis as somebody who  
02:33:26 11 made a horrible mistake but is not a throw-away person. And I  
02:33:30 12 would ask that his history and characteristics play into your  
02:33:35 13 decision to possibly come below the guidelines.

02:33:38 14 Something I didn't include in my memorandum but  
02:33:41 15 looking at the pretrial report or the probation report,  
02:33:44 16 there's also a history of substance abuse, and you can take  
02:33:49 17 that into account.

02:33:49 18 Mr. Lewis, as he testified to but as is borne out in  
02:33:51 19 the pretrial report, was in and out of Sheridan Hospital. He  
02:33:57 20 smoked marijuana on a daily basis. He struggled with  
02:34:01 21 substance abuse. And I think that a continuing pattern that  
02:34:04 22 criminal lawyers see and judges see and prosecutors see, is  
02:34:09 23 that substance abuse can ruin your lives in more ways than  
02:34:14 24 one. I mean, he wasn't thinking clearly possibly from a  
02:34:16 25 lifetime of using drugs or having used drugs and gotten off it

02:34:20 1 and then getting reintroduced to it. So I think the Court can  
02:34:25 2 take that into consideration as well, as a factor that may  
02:34:27 3 warrant a departure.

02:34:29 4 If I may, I have some notes.

02:34:44 5 We do have some photographs that were -- you saw them  
02:34:47 6 during the trial. I think you remember. We were going to try  
02:34:49 7 to introduce them, and then you asked Mr. Kubiowski if he  
02:34:54 8 had any objection, because I believe you said it would  
02:34:57 9 certainly open the door to prior instances of misconduct. And  
02:35:01 10 I think at that point I grabbed the photographs back anyway,  
02:35:04 11 because it wasn't a good idea to use them.

02:35:07 12 But we do have those, and I'm not showing those to  
02:35:10 13 you or asking you to look at those necessarily, you know, to  
02:35:14 14 kind of tug at your heart strings, but this does show who  
02:35:17 15 Scott Lewis is. It shows him as a family man, and these were  
02:35:21 16 taken beforehand. It shows him with his children. It shows  
02:35:24 17 him with his fiancée. And it shows him in a setting other  
02:35:28 18 than just being put on a big screen in this courtroom talking  
02:35:32 19 about fake drugs with an informant behind him laughing. It  
02:35:36 20 shows the full person that Scott Lewis is.

02:35:42 21 You also obviously have to take into account the  
02:35:46 22 sentencing guidelines. But you have somewhat -- well, not  
02:35:49 23 somewhat -- you have been, I guess, uncuffed from having to  
02:35:53 24 base it on the sentencing guidelines. And I think in this  
02:35:55 25 case the guidelines truly overstate not only the crime, but

02:36:01 1 when compared with the factors that you can now look at under  
02:36:05 2 3553(a), I think a guideline sentence is just too excessive of  
02:36:11 3 a sentence.

02:36:12 4 I would ask -- you know, it's -- I was thinking to  
02:36:15 5 myself walking over here, even if I have a great day and win,  
02:36:18 6 I'm getting fifteen years for my client. I mean, fifteen  
02:36:21 7 years is a long time. I was thinking about, fifteen years ago  
02:36:23 8 I was a junior in high school, and all the time that has gone  
02:36:26 9 passed and all the things that Mr. Lewis is going to miss out  
02:36:29 10 on, even if you sentence him to the minimum under the law.

02:36:33 11 And I would suggest that in this case with the facts  
02:36:36 12 of this case and with the factors that you have to look at,  
02:36:38 13 that a sentence of fifteen years would be sufficient but no  
02:36:44 14 greater than necessary to achieve the goals that sentencing is  
02:36:48 15 supposed to achieve.

02:36:50 16 Even the Seventh Circuit has stated a little bit of a  
02:36:53 17 distaste for these types of cases. They mentioned it in a  
02:36:57 18 recent opinion, on a similar case with the exact same agent,  
02:37:00 19 Locito, Gomez. And there's a question as to whether or not  
02:37:04 20 these are the types of investigations that should be taking  
02:37:07 21 place.

02:37:08 22 That's not my job. My job is to fight them. My job  
02:37:10 23 is to defend clients who are accused of them, and when they  
02:37:14 24 get convicted or acquitted -- but convicted, to ask for mercy,  
02:37:17 25 and I'm doing that in this case. I'm asking you to sentence

02:37:20 1 Scott Lewis to fifteen years. I think it's sufficient, and  
02:37:22 2 anything more, I would suggest, would be greater than  
02:37:25 3 necessary, and that is our request.

02:37:29 4 THE COURT: Anything, Mr. Kubiowski, that you want  
02:37:33 5 to address?

02:37:35 6 MR. KUBIATOWSKI: The reference to the defendants in  
02:37:36 7 this case as Three Stooges, your Honor, is, I think, a gross  
02:37:40 8 exaggeration. The whole point of this type of investigation,  
02:37:43 9 as conducted by the ATF, was to identify individuals who would  
02:37:49 10 be willing to traffic in large quantities of cocaine, 20  
02:37:52 11 kilograms in this instance, who are willing to distribute it,  
02:37:55 12 and are willing to gain access to firearms in order to  
02:37:58 13 accomplish the violent robbery of those 20 kilograms of  
02:38:02 14 cocaine.

02:38:03 15 And in this instance, if you look not only at just  
02:38:06 16 Mr. Lewis' criminal background, but at the criminal  
02:38:09 17 backgrounds of the other two defendants that were arrested on  
02:38:12 18 January 4th, I think it's very clear that the ATF was  
02:38:15 19 successful in identifying three individuals that have a  
02:38:19 20 history of criminal offenses, including violent criminal  
02:38:23 21 offenses. That was the whole point of this investigation.

02:38:27 22 THE COURT: What's the violent criminal offense, the  
02:38:29 23 shooting, the unlawful use of a weapon, is that --

02:38:33 24 MR. KUBIATOWSKI: Not with respect necessarily to  
02:38:36 25 Mr. Lewis, your Honor.

02:38:37 1 THE COURT: Okay.

02:38:37 2 MR. KUBIATOWSKI: But the other defendants did have  
02:38:41 3 violent offenses in their background, specifically  
02:38:45 4 Mr. Billingsley.

02:38:46 5 Mr. Lewis has a criminal conviction for access to a  
02:38:50 6 firearm, and certainly the conversations during the transcript  
02:38:54 7 made it clear that they expected a firearm to be present. But  
02:38:58 8 all three of these individuals had significant criminal  
02:39:02 9 histories, and that was the type of individual that was --  
02:39:06 10 that the ATF was hoping to get in this type of sting  
02:39:10 11 operation, and I believe they succeeded in doing so.

02:39:12 12 THE COURT: The ATF had a sting against Mr. Lewis,  
02:39:16 13 and they had no idea who Mr. Lewis would bring into that  
02:39:20 14 operation as far as the owner of the firearm, right? So the  
02:39:24 15 ATF didn't target violent offenders like Billingsley and  
02:39:28 16 Williams. The ATF targeted him, right?

02:39:31 17 MR. KUBIATOWSKI: That's completely accurate, your  
02:39:35 18 Honor. But the whole point of this type of operation, the  
02:39:37 19 whole point of the stash house, the large amount of cocaine,  
02:39:41 20 the need to rob it, is to see not only if Mr. Lewis would be  
02:39:46 21 interested in doing that and participating in that type of  
02:39:49 22 violent crime, but whether or not he can recruit other  
02:39:51 23 individuals that are also willing to participate in that type  
02:39:55 24 of crime.

02:39:55 25 And the type of individuals that are going to be



02:39:58 1 willing to participate in that type of crime is not your  
02:40:03 2 average-day citizen. It's going to be somebody with a  
02:40:05 3 criminal background, and that's exactly what resulted, based  
02:40:10 4 on the arrest.

02:40:11 5 THE COURT: Okay. Anything anyone wants to add,  
02:40:15 6 before Mr. Lewis is given an opportunity to talk?

02:40:17 7 MR. CHERONIS: I would just like to say that  
02:40:19 8 Mr. Lewis did tell me -- and I didn't get them -- but he does  
02:40:23 9 have forum certificates, since he's been incarcerated. I  
02:40:28 10 mean, this is an '07 case and he's been locked up for a while.  
02:40:29 11 And he has been going to classes, bible study and other  
02:40:33 12 classes, while at the MCC. He certainly has been making the  
02:40:37 13 best of what is certainly a difficult situation.

02:40:41 14 I will -- I think they're still right there in the  
02:40:44 15 lockup. I mean, if I could get those?

02:40:45 16 THE COURT: You're free to do so, yes.

02:40:52 17 (Exit Mr. Cheronis.)

02:41:17 18 (Enter Mr. Cheronis.)

02:41:19 19 MR. CHERONIS: There's a lot of them, your Honor. I  
02:41:21 20 will tender them to you. I don't know if you want me to read  
02:41:23 21 them into the record or --

02:41:24 22 THE COURT: You can tender them to me.

02:41:26 23 MR. CHERONIS: All right.

02:41:26 24 THE COURT: Or you can read them into the record as  
02:41:29 25 well so we have it.

02:41:29 1 MR. CHERONIS: He has a certificate of completion  
02:41:33 2 regarding dependency and treatment at a discipleship program;  
02:41:39 3 certificate of completion for a paternal involvement center;  
02:41:42 4 certificate of completion for adult continuing education  
02:41:45 5 entrepreneurship; a certificate of completion for volunteer  
02:41:49 6 services for counseling program outstanding contributions as  
02:41:53 7 facilitator, clerk, and coordinator; certificate of excellence  
02:41:59 8 for participation in the victim impact homicide counseling  
02:42:03 9 center; certificate of completion for the mister counseling  
02:42:09 10 phase 8; the American Bible Academy -- there are several  
02:42:14 11 certificates of completion from the American Bible Academy;  
02:42:17 12 certificate of completion for more bible academy; truths of  
02:42:21 13 the bible, certificate of achievement; bible handbook,  
02:42:24 14 certificate of achievement. I'm assuming he got really good  
02:42:28 15 at it by the fifth one.

02:42:30 16 Certificate of achievement, Jesus the Christ; God's  
02:42:34 17 great exchange, certificate of achievement; free to live,  
02:42:39 18 certificate of achievement; you must be born again,  
02:42:39 19 certificate of achievement; the words Jesus taught,  
02:42:42 20 certificate of achievement; the reluctant prophet, certificate  
02:42:45 21 of achievement; God's plan for the world, certificate of  
02:42:48 22 achievement; what Christians believe, certificate of  
02:42:50 23 achievement; more certificate -- two more certificates of  
02:42:53 24 achievement regarding the Christian faith.

02:43:02 25 And there's more in here, but I think your Honor gets

02:43:05 1 the gist.

02:43:06 2 THE COURT: Of what he's been doing since he's been

02:43:08 3 incarcerated.

02:43:09 4 MR. CHERONIS: Absolutely.

02:43:10 5 THE COURT: All right.

02:43:10 6 MR. CHERONIS: And I will, I guess, make these part

02:43:15 7 of the record.

02:43:15 8 THE COURT: That's fine.

02:43:16 9 MR. CHERONIS: If that's necessary. I mean ...

02:43:19 10 THE COURT: If he wants to keep them, they can -- we

02:43:23 11 can just refer to them, as you just did, as part of the

02:43:25 12 record.

02:43:26 13 MR. CHERONIS: Okay. That's fine. Thank you.

02:43:27 14 THE COURT: All right. All right. Anything else

02:43:30 15 anyone wants to add before Mr. Lewis speaks?

02:43:32 16 (No response.)

02:43:33 17 THE COURT: All right. Mr. Lewis, do you have

02:43:33 18 anything you want to say to the Court, before I sentence you,

02:43:36 19 sir?

02:43:37 20 THE DEFENDANT: I --

02:43:38 21 THE COURT: If so, maybe you could come over to the

02:43:40 22 microphone, so I can hear you better.

02:43:40 23 - - -

02:43:41 24 ALLOCUTION

02:43:41 25 THE DEFENDANT: I just wanted to relate to the Court

02:43:44 1 that I understand the serious nature of the charges. And I  
02:43:47 2 realize what potentially could have happened, if this was a  
02:43:51 3 real scenario. And I just wanted to let you know that what  
02:43:54 4 you saw in the videotapes, that was not me. And I know that I  
02:43:58 5 made some bad decisions, and I got to pay for the  
02:44:02 6 consequences. But I just want to let you know that I've been  
02:44:06 7 spending the time here trying to rehabilitate myself.

02:44:09 8 And I know that my life is not over because of this.  
02:44:14 9 Even when this is over, I can go and be a productive member of  
02:44:17 10 society. And that's all I have to say.

02:44:18 11 THE COURT: All right. Thank you, sir.

02:44:18 12 - - -

02:44:26 13 SENTENCE

02:44:26 14 THE COURT: Okay. We start, as we have done, with a  
02:44:29 15 guideline range of 262 to 327 months, that's a 22-year floor  
02:44:37 16 in the guideline range there. Of course, that is adjustable,  
02:44:43 17 according to the 3553 factors. The 60-month sentence is not.  
02:44:47 18 That's subsequent to whatever sentence I impose upon Count 1  
02:44:53 19 of the indictment.

02:44:54 20 So we start with the nature and circumstances of the  
02:44:57 21 offense and the history and characteristics of the defendant,  
02:45:01 22 and I think in this case those overlap significantly.

02:45:06 23 It was a very unique trial that the Court sat and  
02:45:10 24 listened to the testimony regarding over the course of the  
02:45:14 25 days that the witnesses were here. And I have to agree with

02:45:21 1 the Seventh Circuit's statement that if judges sat in a  
02:45:26 2 policymaking role, perhaps we might have reason to wonder  
02:45:31 3 whether this scheme was the right use of law enforcement  
02:45:33 4 resources.

02:45:34 5 That is not my job either, Mr. Cheronis, and it is  
02:45:38 6 not my job to question who they choose to target, but it is my  
02:45:42 7 job to take into account the 3553 factors. And I can say this  
02:45:48 8 about that. The history of criminal activity by Mr. Lewis  
02:45:55 9 does not lead up to or comport with an individual who would go  
02:46:04 10 from a fifteen -- or \$155 bad check, giving a false name to a  
02:46:12 11 police officer, stealing some presents from a Christmas tree,  
02:46:26 12 and then, finally, the more serious of all, the domestic  
02:46:30 13 battery charge, to suddenly dealing in 20 kilograms of cocaine  
02:46:36 14 with a loaded weapon and tied-up individuals.

02:46:39 15 I don't agree that the ATF was identifying an  
02:46:44 16 individual who was willing to traffic in cocaine. I don't see  
02:46:48 17 the trafficking in cocaine in the history here. I don't see  
02:46:52 18 the violence that was discussed in the tape.

02:46:57 19 Now, you spoke those words on the tape, so there's no  
02:47:00 20 question -- I saw the video -- you were ready and willing to  
02:47:06 21 do this particular act, and I can't take that away. That's  
02:47:10 22 what -- that's the reason you're here today. But to say that  
02:47:14 23 that comports with a 32-year sentence, as the Government was  
02:47:18 24 suggesting is appropriate, based upon this person before me  
02:47:23 25 just doesn't make sense to the Court.

02:47:27 1 I think instead that there was -- there's troubling  
02:47:32 2 factors to the Government's case. The fact that the  
02:47:38 3 entrapment defense that was presented was a defense based upon  
02:47:41 4 the fact that the cooperating individual enabled him to use  
02:47:46 5 cocaine and that there was credible testimony from his family  
02:47:50 6 that his personality changed during this period of time, when  
02:47:54 7 he was not a cocaine user beforehand until this period of  
02:47:57 8 time, that may be, according to the Government, found to be  
02:48:00 9 incredible by the jury, but I'm not so sure, as I've ruled,  
02:48:04 10 that that is the case.

02:48:05 11 It could be simply that they didn't find that his  
02:48:09 12 will was overborne and that he was extraordinarily induced.  
02:48:13 13 The truth is is that you have a cooperating individual, who  
02:48:16 14 you've turned over information for, where there is possibility  
02:48:19 15 that he may have been using cocaine. I don't know. We  
02:48:23 16 haven't gotten to the bottom of that.

02:48:24 17 So we're relying on an undercover operation that  
02:48:28 18 takes a nondrug-dealing defendant with no violent criminal  
02:48:34 19 history and has him potentially using drugs with an undercover  
02:48:38 20 informant, and now he's facing 32 years in prison.

02:48:44 21 I think that the nature and circumstances of the  
02:48:46 22 offense show that that twenty-year -- or that 32-year sentence  
02:48:52 23 is significantly created by the Government's undercover  
02:48:58 24 operation. It wasn't chosen to take a kilo of cocaine. It  
02:49:02 25 wasn't chosen to try a various other step or a smaller crime.

02:49:08 1 It was we went to the hilt with this very large crime.

02:49:11 2 I'm not finding sentencing entrapment. I'm taking it  
02:49:14 3 as a factor of the crime.

02:49:17 4 So if I was looking at a man who had committed drug  
02:49:22 5 dealing in his history and if I was looking at a man who had  
02:49:26 6 tied up people in the past -- and I have those offenders in my  
02:49:31 7 courtroom -- then the circumstances of the offense would be  
02:49:34 8 very much in keeping with what the Government laid out for him  
02:49:37 9 to participate in. But that's not the criminal history that I  
02:49:41 10 see here of this individual.

02:49:43 11 And so the circumstances of the offense are such that  
02:49:46 12 there is no cocaine and there was no violence and it was  
02:49:50 13 created to be the extreme scenario that the Government created  
02:49:55 14 for an individual who had not engaged in that extensive and  
02:50:01 15 significantly violent behavior or significant drug dealing in  
02:50:05 16 the past, and that will be taken into account in this  
02:50:07 17 sentence.

02:50:07 18 As far as the history and characteristics of the  
02:50:11 19 defendant, I think I've set forth there's plenty of history  
02:50:14 20 here that shows that you haven't learned your lesson, and  
02:50:17 21 whether bluffing or willing to do so at the time that you  
02:50:20 22 committed this crime, you're going to be held responsible for  
02:50:22 23 your agreement. The jury found you responsible. They didn't  
02:50:26 24 find you entrapped.

02:50:27 25 So I don't see, though, that there's a recidivism

02:50:32 1 that Mr. Lewis is going to create some stash house robbery,  
02:50:36 2 tying up people, and stealing 20 kilos of cocaine. It isn't  
02:50:39 3 in his history. It isn't indicative of his behavior. And I  
02:50:43 4 find that he would not recommit such a crime, because the only  
02:50:47 5 reason it was there in the first place was because it was  
02:50:50 6 created at that level by the undercover operation, which I  
02:50:56 7 will note was also troubling, to some extent, as far as the  
02:51:00 8 ATF's recording of activities that were very much in question  
02:51:06 9 for this jury.

02:51:07 10 The jury took that into account, though, and they --  
02:51:12 11 Mr. Cheronis, you very actively questioned the agent about his  
02:51:15 12 lack of reporting on his reports. And, therefore, I'm  
02:51:18 13 assuming that the jury recognized that, and they took that  
02:51:23 14 into account when they convicted.

02:51:24 15 Now, I don't believe that we need to protect the  
02:51:27 16 public from a crime of Mr. Lewis doing a 20-kilo drug deal.  
02:51:31 17 And so that will be one of the factors that we take into  
02:51:35 18 account.

02:51:35 19 Now, as far as the sentence that is appropriate, you  
02:51:40 20 did agree to participate in this on this date, and, therefore,  
02:51:45 21 you're going to suffer the consequences. There's 60 months  
02:51:48 22 that's automatically suffered, because of who you brought in.  
02:51:51 23 You brought in two individuals, one who had a weapon knowingly  
02:51:55 24 in order to fulfill the role. And so a significant sentence  
02:51:59 25 needs to be imposed in order to tell others that you can't



02:52:03 1 agree to do something like that. You didn't know that it  
02:52:07 2 wasn't going to take place. You believed it was going to take  
02:52:10 3 place.

02:52:10 4 I'm, therefore, going to deviate from the guideline  
02:52:16 5 range, and I'm going to do so based upon the fact that the  
02:52:20 6 circumstances of the crime are such that I don't think they  
02:52:23 7 would be replicated by the defendant and because I don't  
02:52:27 8 believe the history and characteristics of the defendant show  
02:52:29 9 that he was the type that would escalate to this level of  
02:52:33 10 behavior, and I'm going to impose 162 months on Count 1  
02:52:39 11 followed by the 60 months' incarceration on Count 2. That's  
02:52:45 12 100 months down, which brings you to about a thirteen-year  
02:52:49 13 sentence on Count 1, followed by the mandatory five years  
02:52:53 14 after that.

02:52:53 15 Now, aside from all of those factors, I'm going to  
02:52:59 16 impose the supervised period of release to be five years on  
02:53:03 17 Count 1 and 3 to run concurrently.

02:53:07 18 You have a special assessment of \$200.

02:53:09 19 I'm not ordering a fine or restitution.

02:53:11 20 And you also will be required to participate in both  
02:53:17 21 a -- or rather just a drug rehabilitation program during  
02:53:22 22 prison, as well as during your period of supervised release.

02:53:26 23 You need to participate in the collection of a DNA  
02:53:29 24 sample.

02:53:29 25 You may not possess a firearm or a destructive

02:53:32

1 device.

02:53:33

2 You'll participate in that drug program, which may  
3 include urine testing of up to 104 tests per year.

02:53:36

02:53:39

4 And you may not commit another federal, state, or  
5 local crime, once you're on your supervised release.

02:53:42

02:53:44

6 You have a right to appeal this sentence.

02:53:48

7 Mr. Cheronis can give you the details regarding that. It's  
8 within ten days of the imposition of the judgment and  
9 commitment order, which comes out usually within a day or so  
10 of the sentence.

02:53:58

02:54:00

11 Is there anything else that I need to address from  
12 either side?

02:54:02

02:54:03

13 MR. CHERONIS: Not on behalf of Mr. Lewis.

02:54:05

14 MR. KUBIATOWSKI: Not on behalf of the Government,  
15 your Honor.

02:54:07

02:54:07

16 THE COURT: All right. Thank you.

17 (Concluded at 2:54 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

/s/April M. Metzler, RPR, CRR, FCRR      November 16, 2009

April M. Metzler, RPR, CRR, FCRR      Date

Official Federal Court Reporter